IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9640 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAMIR SAGIRUDDIN ANSARI

Versus

STATE OF GUJARAT

Appearance:

MR NM KAPADIA for Petitioner as Amicus Curiae

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

ORAL JUDGEMENT

#. The petitioner is a detenue who came to be detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Ahmedabad City, Ahmedabad, passed on August 30, 1999, in

exercise of powers under Section 3 (1) of the PASA Act.

#. The present petition is recorded on the basis of an application received from the detenue through jail Mr. N.M. Kapadia, learned advocate has been appointed as amicus curae.

#. On perusal of the papers, it appears that the detaining authority took into consideration two offences registered against the petitioner for offences punishable under the I.P.C. The detaining authority has taken into consideration statements of two anonymous witnesses for incidents that occurred on August 12, 1999 and August 8, 1999 and identity of those anonymous witnesses has not been disclosed in exercise of powers under Section 9(2) of the PASA Act. The detaining authority came to conclusion that the petitioner is a "dangerous person" as defined under the PASA Act. He is required to be immediately prevented from pursuing his illegal and anti-social activities detrimental to public order.

#. It appears that the statements of anonymous witnesses have been recorded on August 29, 1999. The said statements have been verified by the detaining authority on 30th August, 1999. The detaining authority has come to conclusion that incidents narrated by the witnesses are correct and that the fear expressed by them qua the petitioner is genuine and their identity is required to be given the shelter of anonymity and the detaining authority, therefore, exercised powers under Section 9(2) of the PASA Act.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of two anonymous witnesses. In the instant case, the detaining authority has verified the statements of anonymous witnesses on 30th August, 1999 and the order of detention was passed on the very same day. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that

there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore stands vitiated in the instant case as well and the petition deserves to be allowed on this count alone.

#. The Court places on record, the appreciation of the services rendered by learned advocate Mr. N.M. Kapadia as Amicus Curiae.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated August 30, 1999 passed against the detenue Jamir Sagiruddin Ansari, is hereby quashed. The detenue - Jamir Sagiruddin Ansari, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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